

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1164 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MANSURI MEHBOOB BHIKHABHAI

Versus

STATE OF GUJARAT

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Appearance:

MR SHAKEEL A QURESHI for Petitioner  
Mr H L Jani, APP for Respondent No. 1  
NOTICE SERVED for Respondent No. 2, 3

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 20/08/98

ORAL JUDGEMENT

By notice dated 3.11.1995 under section 59 of Bombay Police Act to show cause the petitioner was asked to show cause as to why an order be not passed under Sections 55, 56 and 57 of the Act. After hearing the petitioner, the order of externment was passed by the impugned order dated 6.3.1996. The petitioner filed an

appeal against the said order which was rejected by the order of the Secretary, Home Department dated 28.7.1997.

2. It is contended by the learned Advocate that the basis of the order of externment passed and the cases referred in the order are stale inasmuch as some cases are of 1993 and rest of the cases are of 1994. It is also contended that except one case, all the three cases do not relate to I.P.C. offences provided under section 56. The first case is under section 506 (2), 520 and 114 of I.P.C. The second case is under section 135 of the Bombay Police Act. The third case is under section 147, 148, 149 of the IPC. The fourth case is under section 135 of the Bombay Police Act. Thus three cases do not fall within the purview of section 56 inasmuch as opinion is to be formed with respect to a person involved in the commission of omission under chapter XII, XVI, XVII of I.P.C.

3. In view of this, there is some substance in the contention of the petitioner that the averments of the authorities are vitiated for the reason that they have taken into consideration three cases which has no relevance in the matter of externment. In the facts of the case, single case is not sufficient for passing an order of externment.

4. In view of the aforesaid, this Special Criminal Application is allowed. The order of externment dated 6.3.1996 and the order of the Appellate Authority dated 28.7.1997 are quashed and set aside. The order passed under section 62 dated 15.5.97 is also quashed. Rule made absolute.

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msp.